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ORIGINAL FILED
SEP 17 1997
LOS ANGELES
SUPERIOR COURT

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF LOS ANGELES
11 CENTRAL DISTRICT

12 FRANK MANCUSO, SR., an individual,

13 Petitioner,

14 v.

15 CALIFORNIA STATE COASTAL
CONSERVANCY, an agency of the State of
16 California, CALIFORNIA STATE COASTAL
CONSERVANCY BOARD, the governing body of
17 the California State Coastal Conservancy, the
CALIFORNIA DEPARTMENT OF GENERAL
18 SERVICES, an agency of the State of California,
THE MOUNTAINS RECREATION AND
19 CONSERVATION AUTHORITY, an agency of the
State of California and DOES 1 through 100,

20 Respondents.
21

BS 040197
(Petition assigned to Judge
O'Brien)

STATE COASTAL
CONSERVANCY,
DEPARTMENT OF
GENERAL SERVICES AND
MOUNTAIN RECREATION
AND CONSERVATION
AUTHORITY REPLY BY
WAY OF ANSWER TO THE
FIRST AMENDED PETITION
WRIT OF MANDATE

Hearing: Sept. 23, 1997
Time: 9:30 A.M.
Dept.: 85

22 The State Coastal Conservancy (hereinafter "Conservancy"), the Department of
23 General Services (hereinafter "Department") and the Mountains Recreation and
24 Conservation Authority (hereinafter "MRCA") hereby reply by way of an answer to the
25 First Amended Petition for Writ of Mandate filed in the above entitled matter and admit,
26 deny and affirmatively allege as follows:

27 1. Deny each and every allegation set forth in the first unnumbered paragraph of the
28 petition.

1 2. Except to admit that the Conservancy holds an easement for public access across a
2 portion of real property to which petition claims fee title, that it may or may not
3 determine to open that easement to public use so as to facilitate access from Pacific Coast
4 Highway to the mean high tide line of the Pacific Ocean and that it held a public meeting
5 on May 16, 1996 for the limited purpose of authorizing a contract to collect data on the
6 feasibility of making the improvements necessary to permit public use of the easement in a
7 manner consistent with the Conservancy's coastal access standards, deny each and every
8 allegation set forth in paragraph 1 of the petition.

9 3. Deny each and every allegation set forth in paragraph 2 of the petition.

10 4. Deny each and every allegations set forth in paragraph 3 of the petition.

11 THE PARTIES

12 5. Except to admit that the real property to which petitioner claims fee title is
13 burdened by a public access easement, that said property is located in Malibu, Los
14 Angeles County and that there are improvements on that real property, deny on the basis
15 of a lack of information and belief each and every allegation set forth in paragraph 4 of
16 the petition.

17 6. Except to admit that the Conservancy is an agency of the State of California within
18 the Resources Agency and that it holds an easement for public access across real property
19 to which petitioner claims fee title, deny each and every allegation set forth in paragraph 5
20 of the petition.

21 7. Deny each and every allegation set forth in paragraph 6 of the petition.

22 8. Admit the allegations of paragraphs 7 and 8 of the petition.

23 9. Deny on the basis of a lack of information and belief each and every allegation set
24 forth in paragraph 9 of the petition.

25 FACTUAL ALLEGATIONS

26 10. Except to admit that the Conservancy holds title to an easement which is
27 sometimes called the "Chiate/Wildman easement"; that it traverses portions of two parcels
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1 of real property; and that fee title to one of those parcels of property is claimed by
2 petitioner, deny each and every allegation set forth in paragraph 10 of the petition.

3 11. Except to admit that the easement held by the Conservancy was offered to the
4 Conservancy as a condition of a coastal development permit for the subdivision and
5 development of real property; that the party offering the permit obtained the benefits of
6 that permit and did not file a timely challenge to the legality of the permit or any
7 conditions to it; and that the permit was issued, accepted and acted upon prior to the
8 United States Supreme Court's decision in Nollan v. California Coastal Commission,
9 (1987) 483 U.S. 825, deny each and every allegation set forth in paragraph 11 of the
10 petition.

11 12. Except to admit that the easement is generally 10 feet in width, commences at
12 Pacific Coast Highway and extends to the mean high tide line of the Pacific Ocean at
13 Escondido Beach, is not open to the public and that proposed tennis courts, fences, gates,
14 hedges, landscaping, driveways and other structures have been placed in the easement
15 without the approval of the Conservancy and without benefit of required permits, deny
16 each and every allegation set forth in paragraph 12 of the petition.

17 13. Deny each and every allegation set forth in the underlined heading located
18 between paragraphs 12 and 13 of the petition.

19 14. Except to admit that Public Resources Code section 31404 speaks for itself, deny
20 each and every allegation set forth in paragraph 13 of the petition.

21 15. Deny each and every allegation set forth in paragraph 14 of the petition.

22 16. Deny each and every allegation set forth in paragraph 15 of the petition.

23 17. Deny each and every allegation set forth in paragraph 16 of the petition.

24 18. Except to admit that on May 16, 1996 the Conservancy authorized a contract for
25 the purpose of collecting data on the feasibility of constructing the improvements
26 necessary to facilitate public use of the easement in a manner consistent with the
27 Conservancy's coastal access standards, deny each and every allegation set forth in
28 paragraph 17 of the petition.

1 19. Except to admit that should the Conservancy obtain data indicating that it is
2 feasible to construct the improvements necessary to facilitate public use of the easement in
3 a manner consistent with the Conservancy's coastal access standards the Conservancy will
4 then determine whether to open the easement to public use after taking into consideration
5 what impacts opening the easement might have on the environment, the Conservancy
6 denies each and every allegation set forth in paragraph 18 of the petition.

7 20. Deny each and every allegation set forth in paragraph 19 of the petition.

8 21. Deny each and every allegation set forth in paragraph 20 of the petition.

9 22. Except to admit that the administrative record of the proceedings before the
10 Conservancy speaks for itself, deny each and every allegation set forth in paragraphs 21,
11 22 and 23 of the petition.

12 23. Except to admit that on September 20, 1995, the Conservancy voted to authorize
13 a 20 year interagency contract with the MRCA for the management and operation of
14 several easements including the easement at issue in this proceeding and that no such
15 contract has ever been executed, deny each and every allegation set forth in paragraph 24
16 of the petition.

17 FIRST CAUSE OF ACTION

18 23. With respect to paragraph 25 of the petition, respondents reallege and incorporate
19 each and every admission, denial and affirmative allegation set forth in their responses to
20 each paragraph of the petition up to and including paragraph 24 thereof.

21 24. Except to admit that the administrative record of proceedings before the
22 Conservancy speaks for itself, deny each and every allegation set forth in paragraph 26 of
23 the petition.

24 25. Deny each and every allegation set forth in paragraphs 27, 28, 29, 30, and 31 of
25 the petition.

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1 36. Except to admit that Public Resources Code section 21102 speaks for itself, deny
2 each and every allegation set forth in paragraph 47 of the petition.

3 37. Except to admit that Public Resources Code section 21106 speaks for itself, deny
4 each and every allegation set forth in paragraph 48 of the petition.

5 38. Except to admit that the Conservancy authorized a contract for the purpose of
6 collecting data on the feasibility of constructing the improvements necessary to facilitate
7 public use of the easement in a manner consistent with the Conservancy's coastal access
8 standards, deny each and every allegation set forth in paragraph 49 of the petition.

9 39. Deny each and every allegation set forth in paragraphs 50 and 51 of the petition.

10 **AFFIRMATIVE DEFENSES**

11 1. The FIRST CAUSE OF ACTION of the petition fails to state facts sufficient to
12 constitute a cause of action for a violation of due process under the rule enunciated in
13 Horn v. County of Ventura (1979) 24 Cal.3d 605 in that it fails to allege that the
14 Conservancy's action at issue was adjudicatory in nature and that it constituted a
15 significant deprivation of petitioner's property rights. In point of fact, the approval of a
16 contract to collect data is not adjudicatory in nature and does not constitute a significant
17 deprivation of anyone's property rights.

18 2. The FIRST CAUSE OF ACTION of the petition fails to state facts sufficient to
19 constitute a cause of action in that it fails to join an indispensable party. The first cause
20 of action seeks an order setting aside the Conservancy's action authorizing a contract
21 between the Conservancy and Charles I. Rauw Consulting Engineers such an action would
22 patently have an adverse effect on the contract rights of Charles I. Rauw Consulting
23 Engineers by preventing them from obtaining the benefit of their contract in a timely
24 manner.

25 3. The FIRST CAUSE OF ACTION of the petition is moot and petitioner has no
26 need of the extraordinary remedy of a writ of mandate in that on January 23, 1997
27 petitioner's attorney attended a meeting of the Conservancy in which he had an
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1 opportunity to speak to the issue of the data collection contract with Charles Rauw before
2 that contract was actually implemented.

3 4. The FIRST CAUSE OF ACTION of the petition fails to state facts sufficient to
4 constitute a cause of action in that it petitioner's agent Susan McCabe received timely
5 notice of the Conservancy's May 16, 1996 meeting.

6 5. The SECOND CAUSE OF ACTION of the petition fails to state facts sufficient to
7 constitute a cause of action in that the Conservancy's decision to authorize a contract for
8 the collection of data is not a property transaction within the meaning of Public Resources
9 Code section 31107.1. Thus, petitioner has no right to adoption of notice procedures
10 which would provide him with notice of the authorization of a contract for the collection
11 of data under this section.

12 6. The SECOND CAUSE OF ACTION of the petition fails to state facts sufficient to
13 constitute a cause of action in that Public Resources Code section 31107.1 does not on its
14 face require the Conservancy to adopt notice procedures for anyone prior to May 16,
15 1996. Thus, petitioner has no right to the adoption of notice procedures which would
16 provide him with notice of the authorization for the collection of data under this section
17 prior to May 16, 1996.

18 7. The SECOND CAUSE OF ACTION of the petition fails to state facts sufficient to
19 constitute a cause of action in that mandamus will not lie to compel either a prohibited act
20 or the exercise of legislative discretion in a particular manner. Here, given the existence
21 of the Office of Administrative Law, respondents have no lawful ability to adopt a notice
22 regulation pursuant to Public Resources Code section 31107.1 on their own and have the
23 legislative discretion as to whether to request approval of such a regulation by the Office
24 of Administrative Law.

25 8. The SECOND CAUSE OF ACTION of the petition fails to state facts sufficient to
26 constitute a cause of action in that petitioner has failed to demonstrate a beneficial interest
27 in the issuance of the requested writ or that he will suffer any injury if the writ is not
28 issued.

1 9. Petitioner lacks standing to bring the THIRD CAUSE OF ACTION of the petition
2 in that he fails to allege any beneficial interest in the establishment of a memorandum of
3 understanding between the Conservancy and the Department which provides notice
4 procedures for real property transactions other than the disposition of property.

5 10. The THIRD CAUSE OF ACTION of the petition fails to state facts sufficient to
6 constitute a cause of action in that the Conservancy's decision to authorize a contract for
7 the collection of data is not a transaction within the meaning of Public Resources Code
8 section 31107.1. Thus, petitioner has no right to adoption of notice procedures which
9 would provide him with notice of the authorization of a contract for the collection of data
10 under this section.

11 11. The FOURTH CAUSE OF ACTION of the petition fails to state facts sufficient
12 to constitute a cause of action under the California Environmental Quality Act (hereinafter
13 "CEQA") in that authorization of the contract at issue herein is not a project pursuant to
14 14 California Code of Regulations section 15378(c).

15 12. The FOURTH CAUSE OF ACTION of the petition fails to state facts sufficient
16 to constitute a cause of action under CEQA in that the contract authorization at issue
17 herein is categorically exempt as data collection under 14 California Code of Regulations
18 section 15306.

19 13. The FOURTH CAUSE OF ACTION of the petition fails to state facts sufficient
20 to constitute a cause of action under CEQA in that the contract authorization at issue
21 herein is categorically exempt under 14 California Code of Regulations section 15262 as a
22 feasibility study which was required to consider appropriate environmental factors.

23 14. All causes of action of the petitioner related to the Conservancy's action with
24 respect to the 20 year interagency maintenance and operation agreement are moot in that
25 the agreement was never executed and on January 23, 1997 the Conservancy withdrew its
26 authorization for staff to enter into such an agreement with respect to the easement at
27 issue in this proceeding.

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1 WHEREFORE, respondents pray that:

2 1. Judgment be entered denying the writ of mandate requested in the First Cause of
3 Action;

4 2. Judgment be entered denying the writ of mandate requested in the Second Cause of
5 Action;

6 3. Judgment be entered denying the writ of mandate requested in the Third Cause of
7 Action;

8 4. Judgment be entered denying the writ of mandate requested in the Fourth Cause of
9 Action;

10 5. Judgment be entered denying petitioner's request for attorney fees under 1021.5;

11 6. Petitioner take nothing by way of the instant petition;

12 7. Judgment be entered awarding respondents their reasonable costs of suit; and

13 8. Judgment be entered awarding respondents such other and further relief as the

14 Court deems just and proper.

15 DATED: 9/15/97

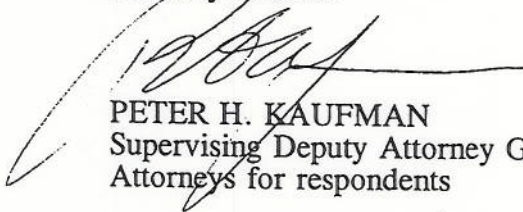
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PETER H. KAUFMAN
Supervising Deputy Attorney General
Attorneys for respondents

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DECLARATION OF SERVICE

Case Name: *Mancuso v. Ca. State Coastal Conservancy, et al.*
L.A. Superior Court, Central Dist. No.: BS 040197

I declare:

I am employed in the County of San Diego, California. I am 18 years of age or older and not a party to the within entitled cause; my business address is 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, California 92186-5266.

On September 15, 1997, I served the attached

STATE COASTAL CONSERVANCY, DEPARTMENT OF GENERAL SERVICES AND MOUNTAIN RECREATION AND CONSERVATION AUTHORITY REPLY BY WAY OF ANSWER TO THE FIRST AMENDED PETITION OF WRIT OF MANDATE

by placing a true copy thereof enclosed in a United Parcel Service Next Day Air sealed envelope thereon fully prepaid at San Diego, California, addressed as follows:

IRELL & MANELLA LLP
Allan J. Abshez, Esq.
Michael S. Lowe, Esq.
1800 Avenue of the Stars, Suite 900
Los Angeles, CA 90067-4276

Attorneys for Petitioner Frank Mancuso, Sr.

I declare under penalty of perjury the foregoing is true and correct and that this declaration was executed on September 15, 1997 at San Diego, California.

J. JASON MURRAY


Signature